



Department of Development Services  
205 Lawrence Street  
Marietta, Georgia 30060  
Brian Binzer, Director

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## STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2012-23

Legistar #: 20120565

Board of Zoning Appeals Hearing: Monday, June 25, 2012 – 6:00 p.m.

Property Owner/Applicant: Helga & Gino Lanza  
864 Park Manor Court  
Marietta, GA 30064

Address: 864 Park Manor Court

Land Lot: 10110 District: 16 Parcel: 0470

Council Ward: 4 Existing Zoning: R-2 (Single Family Residential 2 units/acre)

### Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase the maximum height of a fence within a yard fronting a public street from 4' to 6.' [Section 710.04 (A)(1)]

### Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

### Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.

3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



**Front of subject property (from Park Manor Ct)**



**Rear of subject property along Kennesaw Avenue**

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**Recommended Action:**

**Approval with stipulations.** The applicants, Helga and Gino Lanza, are requesting variances to construct a fence on their property at 864 Park Manor Court. The subject property is zoned R-2 (Single Family Residential – 2 units / acre) and contains road frontage along both Park Manor Court and Kennesaw Avenue; however, the only vehicular access is from Park Manor Court. The applicants wish to construct a 6' privacy fence along their rear property line along Kennesaw Avenue.

In residentially zoned districts the ordinance only allows four foot (4') tall fences made of decorative material (wood, brick, stone, or wrought iron) in any yard fronting a street. The required setback for a fence is two feet from the right of way line. The applicants wish to construct a wooden privacy fence that would meet the requirement for material and setback but not for height.

There is consistent precedent established for granting height variances for fences, as described below:

- ***V2011-07: 651 St. Anne's Road*** ***March 28, 2011***
  - (1) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
  - (2) Variance to allow a wooden fence to be within 2 feet of the public right-of-way.
- ***V2011-06: 840 N. St. Mary's Lane & 697 Kennesaw Ave*** ***March 28, 2011***
  - (1) Variance to increase the maximum height of a fence within a yard fronting a public street from 4 ft. to 6 ft. and;
  - (2) Variance to increase the maximum height of a fence within a side yard between the street and the front edge of the house from 4 ft. to 6 ft.
- ***V2011-08: 213 Maxwell Avenue*** ***April 25, 2011***
  - (1) Variance to allow an 8' tall wooden fence along the yard fronting a public/private street;
  - (2) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
  - (3) Variance to allow a wooden fence to be within 2 feet of the public right of way
- ***V2011-36: 328 Freyer Drive*** ***November 28, 2011***
  - (1) Variance to increase the maximum height of a fence within a yard fronting a public street from 4' to 6';
  - (2) Variance to reduce the required setback for a fence from 2' to 0'.
- ***V2011-37: 642 Allgood Road*** ***November 28, 2011***
  - (1) Variance to increase the height of a fence (wrought iron) in front and side yard from 4 ft. to 6 ft.
  - (2) Variance to allow fence to be constructed less than 2 ft. of the public right-of-way.
- ***V2012-13: 235 South Avenue*** ***April 30, 2012***
  - (1) Variance to increase the height of a wooden fence from 4 ft. to 6 ft. along the north side property line.
  - (2) Variance to reduce the requirement of 2 ft. to 0 ft. within the public right-of-way.



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- **V2012-14: 1285 Cobb Parkway North** **April 30, 2012**  
(1) Variance to increase the allowable height of a fence from 8' to 10'.
  - **V2012-18: 72 Griggs Street** **May 21, 2012**  
(1) Variance to increase the height of a fence in the side yard from 4 ft. to 6 ft.

Allowing the proposed fence should not affect any of the surrounding properties, as many of the properties along Kennesaw Avenue have similar fencing and/or screens. Additionally, exceptional circumstances apply to this property, as it is a double-frontage lot.

However, based on historic aerial images, the portion of the backyard adjacent to Kennesaw Avenue contained a thick buffer of trees as well as a fence. It appears this fence and vegetation has been recently cleared to extend the depth of the backyard. The vegetative screen that was removed provided a better visual buffer for the pedestrians along the Kennesaw Avenue trail than a stark, 6' privacy fence will. Therefore, staff suggests approving the request for a 6' wooden privacy fence, with the stipulation that the fence be setback far enough to provide an evergreen screen on the subject property between the fence and the pedestrian trail, similar to what was approved for the property at 840 N. St. Mary's Lane & 697 Kennesaw Ave.

Because fence variances have been consistently approved in the past and the proposal should not be detrimental to public safety, the surrounding properties, or overall community, *staff recommends approval of this variance request with the following stipulations:*

1. *One row of 2" caliper evergreen trees must be planted between the property line and fence.*
2. *The fence must be stained.*